



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

TRG  
Docket No: 633-00  
26 July 2000

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) Case Summary  
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the United States Marine Corps filed enclosure (1) with this Board requesting that nonjudicial punishment (NJP) entries dated 21 June 1991 and 16 August 1991 be removed from his record.

2. The Board, consisting of Mr. Caron, Mr. Swarens and Mr. Zarnesky, reviewed Petitioner's allegations of error and injustice on 18 July 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner received NJP on 18 June 1991 for operating a motor vehicle under the influence of alcohol on 22 May 1991. On 21 June 1991 an Offenses and Punishments (Page 12) entry was made to document the NJP. The page 11 entry shows that his appeal was approved on 26 July 1991. However, the NJP entry was not lined out as required by regulations.

d. Petitioner received NJP on 31 July 1991 for the same offense. The punishment imposed was 60 days restriction, forfeiture of pay totaling \$844 and a reduction in rank from LCPL (E-3) to PFC (E-2). The reduction in rank was suspended for six

months. The page 11 entry documenting the NJP is dated 16 August 1991. The NJP entry does not state whether or not the NJP was appealed, as required by regulations.

e. Petitioner states in his application that the page 12 entries give the impression that he had two separate offenses of drunk driving within two months. He believes that these entries caused him to fail of selection to the grade of SSGT (E-6) in 1998 and 1999.

f. Attached to enclosure (1) is an advisory opinion from the Military Law Branch, Headquarters Marine Corps which states, in part, as follows:

... we recommend that the 21 June 1991 NJP entry be deleted. Concerning the 16 August 1991 NJP, the Report and Disposition of Offenses ... that records the proceeding is substantially correct in form and suggests no irregularity in the proceeding it self. The punishment imposed was authorized based on the grade of the officer who imposed it, and a review of the record does not suggest that the NJP authority abused his discretion. In addition, Petitioner fails to provide any evidence of substantive or procedural error in the NJP. We do recommend, however, that the 16 August 1991 NJP entry be amended to indicate "not appealed."

Also attached to enclosure (1) is an advisory opinion from the Promotion Brach, HQMC which states that if one or both of the NJP's are removed from the record, Petitioner will be eligible for remedial consideration for promotion.

g. In his rebuttal to the advisory opinions, Petitioner agrees with the recommendation for removal of the first NJP entry and the remedial promotion board. Concerning the second NJP entry, he contends that documentation of the status of the appeal, if any, remains a substantive requirement to the record which was omitted by the command. Since the entry was not made, he believes that a substantive omission occurred and the second NJP entry should also be removed from the record.

#### CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants partial relief. The Board agrees with the recommendation contained in the advisory opinion that the NJP entry of 21 June 1991 should be deleted from the page 12. This should include removal of the

immediately preceding entry, dated 30 May 1991, in which he acknowledged his right to consult with counsel and the right to refuse NJP, and any other entries in the record which indicates that he received nonjudicial punishment in June 1991.

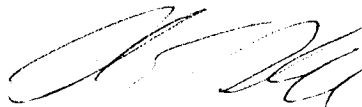
The Board also agrees with the recommendation contained in the advisory opinion that the NJP entry dated 16 August 1991 should not be removed from the record. However, the words "not appealed" should be added to the NJP entry on the page 12.

No action is required on the promotion issue since Petitioner will be eligible to apply for remedial consideration.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected by deleting the NJP entries dated 30 May 1991 and 21 June 1991 from the page 12.
  - b. That the words "not appealed" be added to the NJP entry of 16 August 1991.
  - c. That no further relief be granted.
  - d. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.
  - e. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

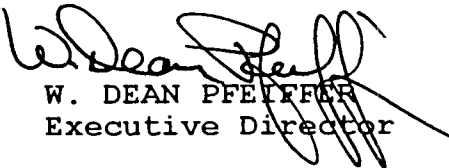
ROBERT D. ZSALMAN  
Recorder



ALAN E. GOLDSMITH  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the

authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER  
Executive Director